TENAGA NASIONAL BHD v. MAJLIS BANDARAYA MELAKA BERSEJARAH

HIGH COURT MALAYA, MELAKA
MOHD RADZI ABDUL HAMID J
[JUDICIAL REVIEW NO: MA-25-8-04-2023]
1 FEBRUARY 2024

Abstract – *In the State of Malacca, a 'holding' under the Local Government Act 1976 ('Act') refers not only to land but also, inter alia, building. Section 2 does not make a distinction on the status of ownership between the owner of a land and the owner of a building. Although a party may be the owner of a building and not the owner of a land, the Act presumes that the building is owned by the registered owner of the land where the building may reside.*

ADMINISTRATIVE LAW: *Judicial review – Application for – Challenge against decisions of Local Government Authorities – Applicant licensee under Electricity Supply Act 1990 – Local Government Authorities dismissed applicant's objections or appeal against notices of new valuation list – Imposition of rates on transmission line towers or pylons erected by applicant – Whether notices complied with requirements of s. 137 of Local Government Act 1976 – Whether applicant owner of holdings – Whether applicant proper party against whom notices should be issued*

LOCAL GOVERNMENT: *Local authority – Challenge against decisions of Local Government Authorities – Applicant licensee under Electricity Supply Act 1990 – Local Government Authorities dismissed the applicant's objections or appeal against notices of new valuation list – Imposition of rates on transmission line towers or pylons erected by applicant – Whether notices complied with requirements of s. 137 of Local Government Act 1976 – Whether applicant owner of holdings – Whether applicant proper party against whom notices should be issued – Local Government Act 1976, ss. 2, 137 & 141*

STATUTORY INTERPRETATION: *Definition – Local Government Act 1976, s. 2 – 'holding' – Whether only limited to lands – Whether definition extended – Whether 'holding' is 'building'*

The present applications for judicial review arose from the decisions of four local authorities in dismissing the applicant's objections or appeals against each of the respondents' notices of new valuation list, issued pursuant to ss. 137 and 141 of the Local Government Act 1976 ('Act') ('notices'). The said notices were issued with respect to the imposition of rates on the applicant on transmission line towers or pylons erected by the applicant, as a licensee under the Electricity Supply Act 1990 ('ESA'). The respondents each took a stand that the applicant was the owner of all these transmission towers and, as the owner, the applicant was liable for the payment of rates

for each of those towers, which were referred to as 'holdings' under the Act. In support of its applications, the applicant submitted that: (i) the notices failed to comply with the requirements of s. 137 of the Act with regards to particulars of the owner and address of the holdings; and (ii) the applicant was not the owner of the holdings within the meaning of the Act and was, therefore, not the proper party against whom the notices should be issued. Objecting to the applications, the respondents argued that: (i) the transmission towers referred to in the notices belonged to the applicant. Each of the notices contained sufficient information, as required by s. 137 of the Act, in the context of identifying the location of the transmission towers. The identification of the location of the transmission towers, by reference to the individual numbers, geographical coordinates and plot numbers were sufficient; and (ii) as far as the State of Malacca was concerned, s. 2 of the Act provided an extended definition to the meaning of 'holding', where that word was not only limited to lands but extended to include 'messuages, buildings, easements and hereditaments of any tenure'. Since s. 2 also defines 'building' to include transmission towers, the applicant must be regarded as an owner of the holdings.

Held (allowing applications):

(1) The information required to be included in the notices must be commensurate with the context of the building referred to. No one, other than a licensee under the ESA, which in this case was the applicant, has the right to construct, operate and maintain those towers. Additionally, many transmission towers are constructed along transmission towers or power grids that run across rural and remote areas where the land on which they are constructed on are not usually identified by reference to postal addresses. Therefore, these towers or holdings, were sufficiently identifiable by reference to their numbers, geographical coordinates and location as set out in the notices. There could be no confusion about where these towers were or who owned them. No other party, other than the applicant, owned and operated power grids which included the transmission lines and the associated towers in the State of Malacca. (paras 14-16)

(2) Section 2 of the Act defines 'holding' and the definition points to two discernible parts. The first of the provision puts emphasis on the word land as the subject matter of holding. The second part of the definition serves to expand the subject matter of holding in the States of Penang and Malacca. As far as it related to 'building', it would have been unnecessary and redundant for the drafters to mention 'building' in the second part if it was not to be regarded as a distinct subject matter since building was mentioned as a part of land in the first part. Thus, the use of the word 'building' in the second part of that definition must have been intended to be a separate and distinct subject matter from land, as

mentioned in the first part. Therefore, the words '… in the case of Penang and Malacca, 'holding' includes … building …' must mean that apart from land, a holding in the State of Malacca included building as a separate and distinct subject matter. In the State of Malacca, therefore, a holding referred not only to land but also, *inter alia*, building. Section 2 does not make a distinction on the status of ownership between the owner of a land and the owner of a building. Although a party may be the owner of a building and not the owner of a land, the Act presumes that the building is owned by the registered owner of the land where the building may reside. The applicant could not be liable for the payment of the rates, pursuant to the notices under s. 137 of the Act, for all those transmission towers that were located on State land or those erected pursuant to licenses or easements under the ESA since the Act presumed the registered owner of the land where the transmission towers were erected were also the owner of the buildings or transmission towers for purposes of imposition of rates under the Act. (paras 28-30 & 33)

(3) The decision of the respective respondents, on the imposition of rates on the applicant for all those transmission towers, was quashed and set aside. The applicant was only liable to pay the rates imposed for those towers that were located on lands owned by the applicant. (paras 40 & 41)

Case(s) referred to:

Abdul Hamid Mohd Amin v. Ramacon Corporation Sdn Bhd [2016] 3 CLJ 111 HC ***(refd)***

Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2011] 1 CLJ 1 FC ***(refd)***

Dewan Bandaraya Kuala Lumpur lwn. Suppiah Govindasamy [1991] 1 CLJ 429; [1991] 1 CLJ (Rep) 104 SC ***(refd)***

Easy Vista Sdn Bhd v. Tenaga Nasional Bhd [2021] 1 CLJ 453 CA ***(refd)***

Home Luck Investments Sdn Bhd v. Commissioner Of Federal Capital Of Kuala Lumpur [1969] CLJU 56; [1969] 1 LNS 56 HC ***(refd)***

Lee Wah Bank Ltd v. The Commissioner Of Federal Capital Of Kuala Lumpur [1961] CLJU 48; [1961] 1 LNS 48 HC ***(refd)***

Majlis Daerah Dungun v. Tenaga Nasional Bhd [2006] 2 CLJ 1078 CA ***(refd)***

Majlis Daerah Hulu Selangor v. United Plantations Bhd [2021] 8 CLJ 590 FC ***(refd)***

Majlis Perbandaran Seremban v. Tenaga Nasional Bhd [2020] 10 CLJ 715 FC ***(refd)***

Salak Land Development Sdn Bhd v. Pentadbir Tanah Kuala Langat & Ors [2015] 4 CLJ 506 CA ***(refd)***

Syarikat Cahaya Muda Perak (Oil) Sdn Bhd v. Majlis Daerah Tapah [2017] CLJU 1213; [2017] 1 LNS 1213 HC ***(refd)***

Tenaga Nasional Bhd v. Majlis Daerah Segamat [2021] 5 CLJ 833 CA ***(refd)***

Tenaga Nasional Bhd v. Majlis Daerah Segamat [2023] 9 CLJ 214 CA ***(refd)***

Tenaga Nasional Bhd v. Majlis Perbandaran Seberang Perai [2003] CLJU 470; [2003] 1 LNS 470 HC ***(refd)***

Teobros Development Sdn Bhd v. Tenaga Nasional Bhd [2007] 9 CLJ 775 HC ***(refd)***

Legislation referred to:
Local Government Act 1976, ss. 2, 137, 141, 144, 146, 163

For the applicant - Goh Peng Hong & Soh Ling Ling; M/s Lai, Goh & Assocs
Natalia Iza Nasaruddin, Tengku Nazmi Tengku Anuar & Wong Yan Zhang; M/s Azmi & Assocs
For the respondents - Adillah Ahmad Nordin, Nurul Nasyirah Mohd Heliemy & Fithriyaani Hafzhan Mohd Shaari; M/s Adillah A Nordin

Reported by Najib Tamby

JUDGMENT

Mohd Radzi Abdul Hamid J:

Matter Before This Court

[1] This is a decision on four applications for judicial review brought by the same applicant, Tenaga Nasional Berhad ('applicant'), against four Local Government Authorities namely, Majlis Bandaraya Melaka Bersejarah, Majlis Perbandaran Alor Gajah, Majlis Perbandaran Jasin and Majlis Perbandaran Hang Tuah Jaya pursuant to cases no. MA-25-5-03-2023, MA-25-6-04-2023, MA-25-7-04-2023 and MA-25-8-04-2023, respectively ('authority/authorities/respondents') ('applications').

[2] All the applications were heard together as they involved the same issues and for that reason, these grounds of judgment will refer to all the applications collectively unless otherwise specified.

[3] These applications arose from the decisions of each of the authorities dated 29 December 2022 (Melaka Bandar Bersejarah and Alor Gajah), 30 December 2022 (Jasin) and 17 January 2023 (Hang Tuah Jaya), respectively, that had dismissed the applicant's objections or appeals against each of the respondents' notices of new valuation list issued pursuant to ss. 137 and 141 of the Local Government Act 1976 ('Act') ('notices').

[4] Those notices were issued with respect to the imposition of rates on the applicant on transmission line towers or pylons erected by the applicant as a licensee under the Electricity Supply Act 1990. It is the stand taken by each of the respondents that the applicant is the owner of all these transmission towers and as the owner of these transmission towers, the applicant is liable for the payment of rates for each of those towers, which are referred to as "holdings" under the Act.

[5] The notices effected 263 holdings:

(i) fifty-seven holdings under Bandaraya Melaka Bersejarah out of which 14 were held under State land, five were held by the applicant's land and 38 were held by the applicant under easement;

(ii) forty-two holdings under Alor Gajah out of which 18 were held under State land, one was held under the applicant's land and 23 were held by the applicant under easement;

(iii) sixty-five holdings under Jasin, out of which six were held under State land and 59 were held by the applicant under easement; and

(iv) ninety-nine holdings under Hang Tuah Jaya, out of which 32, one were held by the applicant's land and 66 were held by the applicant under easement.

[6] It is the applicant's position that the rates for the holdings are only imposable on and payable by the owners of those lands and that in any event, the applicant is not liable to pay all the rates on the ground that each of the notices is defective due to non-compliance with s. 137 of the Act.

[7] Thus, these applications are made to quash the decisions of each of the said authorities that the applicant is liable under the Act as owner of all the 263 holdings.

Issues

[8] The applicant is represented by two different law firms in the applications. For the applications under MA-25-5-03-2023 and MA-25-8-04-2023, it is represented by M/s Lai, Goh & Associates, while for the applications under MA-25-6-04-2023 and MA-25-7-04-2023, it is represented by M/s Azmi & Associates. All the respondents are represented by M/s Adillah A Nordin.

[9] Both sets of counsels for the applicant had raised the same issues in supporting the applications. They are premised on two major points: firstly, that the notices had failed to comply with the requirements of s. 137 of the Act with regards to the particulars of the owner and address of the holdings; and secondly, that the applicant is not the owner of the holdings within the meaning of the Act and is therefore not the proper party against whom the notices should be issued.

Arguments Of Parties

First Issue – Failure To Comply With Section 137 Of The Act

[10] The applicant contends that each of the respondents had failed to comply with the requirements of s. 137 of the Act in that the notices did not have the particulars of the name of the street or locality in which such holding is situated and that there was insufficient designation of the holding either by name or number sufficient to identify it. It was argued that the notices merely referred to the transmission towers by way of numbers, coordinates and the district where they are supposedly located. In addition, it was also argued that the names of the owner and occupier of the holdings were not correctly identified. Section 137 provides:

A (1) The local authority shall cause a Valuation List of all holding not exempted from the payment of rates to be prepared containing:

(a) the name of the street or locality in which such holding is situated;

(b) the designation of the holding either by name or number
B sufficient to identify it;

(c) the names of the owner and occupier, if known;

(d) the annual value or improved value of the holding.

(2) The Valuation List together with the amendments made under
C section 144 shall remain in force until it is superseded by a new Valuation List.

(3) A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may
D determine.

[11] The respondents' failure to comply with the specific requirements of s. 137 of the Act therefore rendered the notices defective. Reference was made to the decisions in *Abdul Hamid Mohd Amin v. Ramacon Corporation Sdn Bhd* [2016] 3 CLJ 111; *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2021] 5 CLJ 833; [2021] 4 MLJ 900; *Syarikat Cahaya Muda Perak (Oil) Sdn Bhd lwn. Majlis Daerah Tapah* [2017] CLJU 1213; [2017] 1 LNS 1213; [2017] MLJU 1288; *Majlis Daerah Hulu Selangor v. United Plantations Bhd* [2021] 8 CLJ 590; [2021] 6 MLJ 539; and *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2011] 1 CLJ 1; [2012] 2 MLJ 41.

F **[12]** On the other hand, the respondents contend that each of the notices contained sufficient information as required by s. 137 in the context of identifying the location of the transmission towers. It was argued that it is common knowledge that transmission towers are not buildings that are usually identified by postal addresses. In most cases, transmission towers are
G constructed on lands that are remote and not easily accessible. Thus, the identification of the location of the transmission towers by reference to the individual numbers, geographical coordinates and plot numbers are sufficient. In any event, it is not disputed that the transmission towers referred to in the notices do belong to the applicant.

H **[13]** With regards to the naming of the owner of the holdings, it was submitted that the applicant was named as the owner of the holdings, consistent with the position taken by each of the respondents that the owner of the holdings is the applicant.

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Court's Deliberations

[14] Whilst this court agrees that the word "shall" used in s. 137 of the Act connotes a mandatory obligation, and it is this court's view that the information required to be included in the notices must be commensurate with the context of the building referred to. The purpose of the information required is to identify with certainty the holdings, their location and the identity of the owner or occupier.

[15] Now, it cannot be ignored that transmission towers are unique steel structures that stand apart and are easily distinguishable from other buildings. More importantly, no one other than a licensee under the Electricity Supply Act 1990, which in this case is Tenaga Nasional Berhad, has the right to construct, operate and maintain those towers. Additionally, it is common knowledge that many transmission towers are constructed along transmission or power grids that are run across rural and remote areas where the lands on which they are constructed are not usually identified by reference to postal addresses.

[16] Therefore, this court agrees with the contention of the respondents that these towers or holdings, as they are referred to for purposes of the Act, are sufficiently identifiable by reference to their numbers, geographical coordinates and location as set out in the notices. There can be no confusion about where these towers are or who owns them. No other party other than Tenaga Nasional Berhad owns and operates power grids, which include the transmission lines and the associated towers in the State of Melaka.

[17] In particular, with respect to lands owned by the applicant, which are five within the Local Government Authority of Melaka Bandar Raya Bersejarah and one each under Alor Gajah and Hang Tuah Jaya, this court does not find any real basis for the applicant to deny knowledge of them and where they are located. All this information is not just within the records of the respective respondent but also in the records of the applicant as the owner of those towers. Therefore, the applicant cannot be misled or prejudiced by the collective information of the number and coordinates of those towers.

[18] It is inconceivable for the applicant to deny knowledge and location of any particular tower and where they reside, whether on State or private land or lands owned by the applicant. Any one tower is part of the same power grid or transmission lines. To deny knowledge and ownership of one tower is to deny all other towers connected to the same transmission line grid. Therefore, this court finds that the information contained in the respective notices fulfils the requirements of s. 137 of the Act, subject to the determination of the meaning of owner of a holding in the present applications.

Second Issue – Whether The Applicant Is Liable For Payment Of The Rates

[19] Now, the applicant contends that the reading of s. 2 of the Act clearly shows that a holding is defined as any land, with or without buildings thereon and that the owner of a holding is defined as in relation to any land or building as the registered proprietor of the land. Section 146 of the Act provides that all rates shall be paid by the persons who are the owners of the holdings. Since the applicant is not the registered owner of the State lands or lands on which it has an easement as a licensee to enter such lands as provided under the Electricity Supply Act 1990, clearly, the applicant cannot be the owner of such holdings.

[20] References were made to the decisions in *Easy Vista Sdn Bhd v. Tenaga Nasional Bhd* [2021] 1 CLJ 453; [2020] MLJU 1417; *Salak Land Development Sdn Bhd v. Pentadbir Tanah Kuala Langat & Ors* [2015] 4 CLJ 506; [2015] 3 MLJ 487 and *Teobros Development Sdn Bhd v. Tenaga Nasional Bhd* [2007] 9 CLJ 775; [2007] 7 MLJ 67. In *Teobros Development* (*supra*), the court held:

> [12] It is to be noted that the 'right of way' that may be granted by the land administrator under s. 11(7) to the defendant is not a permanent and indefeasible right ...
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> [13] This is the position of the law because upon application by the landowner under s. 14 mentioned above, the State Authority may at any time issue an order to require the defendant to remove the electricity line out of the land and may even order the defendant to bear 'the cost of executing the removal or alteration'. Therefore, the defendant has a temporary right to enter private land to erect electricity pylons for their transmission lines if they use the Electricity Supply Act 1990, and a permanent right if and only if they choose to acquire the land permanently by using the Land Acquisition Act 1960.

[21] In advancing the case for the applicant, great reliance was placed by both counsels on the Court of Appeal decision in *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2023] 9 CLJ 214; [2023] 5 MLJ 456, where it was decided that the applicant who was also a party in that case, is not liable for the payment of rates since they are not the registered owners of the lands in question. The applicant cannot be charged for rates merely because they own the transmission towers. The prime consideration is the land upon which the transmission towers are located. To put it simply, if the applicant is not the registered owner of the land, then the notices pursuant to s. 137 of the Act do not apply to them. The Court of Appeal held:

> [44] The word 'owner' is defined in s. 2 of the LGA 1976 to be as follows:
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> > owner in relation to any land or building, means the registered proprietor of the land and, if in the opinion of the local authority the registered proprietor of the land cannot be traced, the person for the time being receiving the rent of the premises in connection

with which the word is used whether on his own account or as agent or trustee for any other person or receiver or who would receive the same if such premises were let to a tenant ...

[45] The emphasis that the rates must be paid by the owner is reiterated in s. 146 of the LGA 1976, which provides that:

All rates shall be paid by the persons who are owners of the holding for the time being ...

[46] Section 146 was considered by the High Court in *Suppiah v. Dewan Bandaraya Kuala Lumpur* [1990] 3 MLJ 44, where the court held that:

It is obvious that the person who has to pay the rates is the owner of the property. Under s. 133 of the Act, the annual rates are to be paid half yearly in advance by the current owner in January and July of each year. Therefore, the words 'owners of the holdings for the time being' in s. 146 should be read to mean the owner for the period of which the rates are imposed. That is what appears to be the intention of Parliament.

[47] The above decision was affirmed by the Supreme Court in *Dewan Bandaraya Kuala Lumpur lwn. Suppiah* [1991] 2 MLJ 45; [1991] 1 CLJ (Rep) 104, where the Supreme Court held that:

Seksyen 146 sekarang ini mengandungi tiga perkara atau proposisi iaitu pertama, sewa atau cukai pintu hendaklah dengan syarat mengikut peruntukan Kanun Tanah Negara, menjadi tanggungan atau liabiliti pertama; kedua, tanggungjawab terletak atas tuan empunya tanah semasa: dan ketiga, memberitahu bahawa peruntukan-peruntukan yang berikutnya adalah dipakai untuk menuntut kembali sewa atau cukai pintu yang telah tidak dibayar.

Adalah jelas nampaknya Akta 1976 ini meletakkan tanggungjawab pembayaran sewa atau cukai pintu ke atas tuan empunya tanah (owners of holdings) dan tidak atas penghuni atau penduduk (occupiers) seperti di England. Perbezaan di antara statut kita dengan statut di England telah diiktirafkan dalam beberapa kes mengenai cukai pintu – lihat *Lee Wah Bank Ltd. v. The Commissioner of Federal Capital* [1962] 1 MLJ 23 dan *Home Luck Investments Sdn. Bhd. v. Commissioner of Federal Capital of Kuala Lumpur* [1969] 1 MLJ 248; [1969] 1 LNS 56.

[48] From the above provisions, it is crystal clear that under the LGA 1976, the assessment rates for the holdings, including the pylons, are to be paid by the registered owners of the said lands.

[22] References were also made to the decisions in *Lee Wah Bank Ltd v. The Commissioner Of Federal Capital Of Kuala Lumpur* [1961] CLJU 48; [1961] 1 LNS 48; [1962] 1 MLJ 23; *Home Luck Investments Sdn Bhd v. Commissioner Of Federal Capital Of Kuala Lumpur* [1969] CLJU 56; [1969] 1 LNS 56; [1969] 1 MLJ 248; *Dewan Bandaraya Kuala Lumpur lwn. Suppiah Govindasamy* [1991] 1 CLJ 429; [1991] 1 CLJ (Rep) 104; [1991] 1 MLJ 149; *Majlis Daerah*

Dungun v. Tenaga Nasional Bhd [2006] 2 CLJ 1078; [2006] 4 MLJ 731; [2006] 4 AMR 211 and *Tenaga Nasional Bhd v. Majlis Perbandaran Seberang Perai* [2003] CLJU 470; [2003] 1 LNS 470; [2003] 4 MLJ 781; [2003] 6 AMR 661.

[23] In opposing those arguments, counsel for the respondents argues that the facts and the law considered in all those cases, especially the Court of Appeal decision in *Majlis Daerah Segamat,* must be distinguished. The starting point is the definition of s. 2 of the Act. It is the respondents' contention that, as far as the State of Melaka is concerned, s. 2 provided an extended definition to the meaning of "holding", where that word is not only limited to lands but extended to include "messuages, buildings, easements and hereditaments of any tenure." Since s. 2 also defines "building" to include transmission towers, as confirmed by the Court of Appeal in *Majlis Daerah Segamat*'s case, the applicant must be regarded as an owner of holdings. The extension of the definition in s. 2 that applies specifically to the State of Melaka therefore distinguishes the applications in this case from the facts and law considered by the Court of Appeal in *Majlis Daerah Segamat*.

[24] In counter-argument, counsels for the applicant point out that this court should not depart from the basic provision of law as provided under s. 146 of the Act and as confirmed by the decisions in *Lee Wah Bank Ltd* (*supra*), *Home Luck Investments* (*supra*) and *Dewan Bandaraya Kuala Lumpur* (*supra*) that rates should only be paid by landowners and not the occupiers. In *Dewan Bandaraya Kuala Lumpur*, the Supreme Court held:

> Adalah jelas nampaknya Akta 1976 ini meletakkan tanggungjawab pembayaran sewa atau cukai pintu ke atas tuan empunya tanah (owners of holdings) dan tidak atas penghuni atau penduduk (occupiers) seperti di England. Perbezaan di antara statut kita dengan statut di England telah diiktirafkan dalam beberapa kes mengenai cukai pintu – lihat *Lee Wah Bank Ltd v. The Commissioner of Federal Capital* [1962] 1 MLJ 23 dan *Home Luck Investments Sdn Bhd v. Commissioner of Federal Capital of Kuala Lumpur* [1969] 1 MLJ 248.

[25] Therefore, the argument put forward by the respondents that the meaning of holding that applies to the State of Melaka is distinct from other States cannot be accepted. It is argued that the meaning of the words "... in the case of Penang and Malacca, "holding" includes ... buildings ..." must be read to mean part of any land and not independent of any land, so that it will be in harmony with the very definition of "owner" under s. 2 of the Act that in relation to any land or building, the owner is the registered proprietor of the land.

Court's Deliberations

[26] In deliberating on this issue, this court would first state that it would be unnecessary to discuss the law with regards to the rights and powers of the authorities to charge and collect rates on holdings. The laws are settled and require no discussion.

[27] The issue that needs determination is whether the construction of the definition of "holding" under s. 2 of the Act sets apart the scope and extent of that definition for the States of Penang and Melaka. In making that determination, this court must not look at s. 2 in isolation but together with all other relevant provisions of the Act. As held by the Federal Court in *Majlis Perbandaran Seremban v. Tenaga Nasional Bhd* [2020] 10 CLJ 715; [2020] 12 MLJ 1, where the construction and meaning of s. 144 of the Act was considered, a statute must first be read as a whole and then read by section so that the provision can be understood and interpreted in the context of the Act as a whole:

> [30] The importance of reading an Act as a whole has been emphasised in many cases. In *Martego Sdn. Bhd. v. Arkitek Meor & Chew Sdn Bhd and another appeal* [2019] MLJU 742; [2019] 8 CLJ 433 this court referred to the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* [1987] SCR(2) 1 wherein Chinnappa Reddy J said:
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> > Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. It a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.
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> [31] It is beyond dispute that each provision or part of a provision must be read in its immediate context and in the context of the Act as a whole. When words are read in their immediate context, the reader forms an impression as to their meaning. Any impression based on immediate context must be supplemented by considering the rest of the Act, including all other provisions of the Act and their various structural components (see: *Ruth Sullivan, Driedgeron the Construction of States* (3rd Ed) Butterworths).
>
> [32] Therefore, we say, s. 144 of Act 171 cannot be read in isolation from the rest of the provisions in Part XV of Act 171. This is because the legislative scheme provided under Part XV under the heading of 'Rating and Valuation' reflects the whole scope of the Act and the real intention

A of the enacting body in dealing with this issue. As such, the court must not only consider one section but all sections in Act 171, including the relation of one section to the other sections, the relation of a section to the general object intended to be secured by the Act. This is in consonance with the doctrine of harmonious construction as explained by this court in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai*
B *& Anor v. Muziadi bin Mukhtar* [2020] 1 MLJ 141; [2020] 1 CLJ 1 ...

[28] Now, "holding" is defined under s. 2 of the Act as follows:

means any land, with or without buildings thereon, which is held under a separate document of title and in the case of subdivided buildings, the
C common property and any parcel thereof and, in the case of Penang and Malacca "holding" includes messuages, buildings easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority.

D **[29]** The reading of that definition points to two discernible parts, the first part, which makes a general reference to land, and the second part, which refers specifically to the States of Penang and Malacca. The first part of that provision puts emphasis on the word land as the subject matter of holding, "... means any land ..." In this court's view, the words "... with or without buildings thereon ..." following the word "land" only describe the condition
E of the land and do not act as adding to subject matter other than land. Therefore, the emphasis on the meaning of holding relates only to land.

[30] Now, having made a general provision, the definition then moves to the second part, which relates only to the States of Penang and Malacca. After having read that definition in its entirety, it is this court's interpretation
F that the second part of that definition serves to expand the subject matter of holding in the States of Penang and Malacca. It seems to this court that as far as it relates to building, it would have been unnecessary and redundant for the drafters to mention "building" again in the second part if it was not to be regarded as a distinct subject matter since the building was mentioned
G as a part of the land in the first part. Thus, the use of the word "building" in the second part of that definition must have been intended to be a separate and distinct subject matter from land, as mentioned in the first part. Thus, the words "... in the case of Penang and Malacca, "holding" includes ... building ..." must mean that apart from land, a holding in the State of
H Malacca (Melaka) includes building as a separate and distinct subject matter. Therefore, in the State of Melaka, a holding refers not only to land but also, amongst others, building.

[31] Since this court opines that the word "holding" in the State of Melaka also includes buildings apart from land, how does this fit into the meaning
I of "owner of the holding", who is liable to pay for rates as provided under s. 146 of the Act?:

> **All rates shall be paid by the persons who are the owners of the holding** for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed. (emphasis added)

[32] Section 2 of the Act does not define "owner of a holding" as a phrase but provides separate definitions to the word "holding" and "owner". Thus, the definition to the phrase "owner of a holding" requires a synthesis of the different definitions. Turning now to the definition of "owner", the Act defines it as follows:

> **(a) in relation to any land or building, means the registered proprietor of the land** and, if in the opinion of the local authority the registered proprietor of the land cannot be traced, the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such premises were let to a tenant; and
>
> (b) in the case of subdivided buildings, includes the management corporation and any subsidiary proprietor; (emphasis added)

[33] What is apparent in that definition is that although it states land and building separately, it does not make a distinction in the status of ownership between the owner of a land and the owner of a building, although they may not necessarily be legally co-incidental. Meaning, although a party may be the owner of a building and not the owner of a land, the Act presumes that the building is owned by the registered owner of the land where the building may reside. Since the word "building" used in the definition of "holding" includes transmission towers, then it follows that s. 2 the Act presumes or deems the registered owner of the land to be also the owner of the transmission tower.

[34] Coming back to the Court of Appeal's decision in *Majlis Daerah Segamat*, although the facts there brought about the consideration of only the first part of s. 2, in the final analysis, the second part does not alter the legal position that the owner of the land is responsible for the payment of the rates pursuant to any notice issued pursuant to s. 137 of the Act. In this court's view, the definition of "owner" under s. 2 circumscribes the context of, who the Act regards as the owner of a holding. Whilst this court agrees that the second part of s. 2 expands the scope of holding for the State of Melaka to include buildings, the definition of "owner" also sees to it that the principle of law that only the owner of the land is responsible for payment of rates remains unchanged. The reading of the word "holding" cannot be read in isolation and must be read subject to the express definition of "owner". Thus, the meaning of "owner of a holding" in the context of transmission towers or pylons is and remains, in the State of Melaka, the registered owner of the land.

[35] To conclude, this court finds that the applicant cannot be liable for the payment of the rates pursuant to the notices under s. 137 of the Act for all those transmission towers that are located on State land or those erected pursuant to licenses or easements under the Electricity Supply Act 1990 since the Act presumes the registered owner of the land where the transmission towers are erected is also the owner of the buildings or transmission towers for purposes of imposition of rates under the Act.

Can The Applicant Still Be Liable Under Section 163 Of The Act

[36] The respondents contend that in any event, the applicant is still liable for payment of the rates for transmission towers situated on State land and since the meaning of "holding" in Melaka extends to buildings which include transmission towers, pursuant to s. 163 of the Act, the applicant is liable to pay the rates as an occupier. Section 163 provides:

> (1) In the case of buildings situated on State land or on land reserved for a public purpose and not occupied by the Federal or State Governments the local authority, with the approval of the State Authority, may impose the rates referred to in section 127 upon the annual value or improved value of all or any of such buildings, and the occupiers of such buildings shall be liable to pay the said rates.
>
> (2) The provisions of this Part shall apply to any rate imposed under subsection (1) except that in the application thereof references to a "holding" shall be deemed to be references to a "building", and references to the "owner" of a holding shall be deemed to be references to the "occupier" of a building.

[37] For purposes of s. 163 of the Act, the "owner" of a holding is deemed to also be referred to as the "occupier" of the building. At first glance, the reading of those provisions suggests that any owner of a building or transmission tower on State land would be deemed to be its occupier and therefore liable for rates. That would fit nicely into the respondents' contention.

[38] However, it must be noted that the deeming provision is predicated firstly on the "owner" of a holding. That section does not, and this distinction is important, deem the reverse, that is, the occupier of the building or the transmission towers are deemed as owners of a holding. Since this court holds the view that the definition of owner of a transmission tower under s. 2 of the Act refers to the registered owner of the land, it would be consistent with this court's view to say that under s. 163, it is only the registered owner of the land who is its occupier and therefore liable to pay the rates.

[39] In any event, referring to the earlier Court of Appeal's decision in *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2021] 5 CLJ 833; [2021] 4 MLJ 900 on the issue of notices issued pursuant to s. 163 of the Act, this

court is bound by *stare decisis* to find that since the notices issued by the respondents in the present case neglected to expressly state which of the locations are State lands, then the respondents are barred from making a claim under that provision:

> [23] Section 163 is applicable for rates to be imposed by the local authority if the 'building' is situated on state or reserved land. In our appeal, the list attached to the Respondents's notice dated 13 November 2014 informing the appellant that the Respondents had prepared a new valuation list of the appellant's holdings pursuant to s 141 of the Act did not state that the pylons are situated on the state land or on the reserved land. It merely sets out that the pylons are located on hundreds of locations where the status of the lands were obviously unknown/privately owned lands within the area administered by the Respondents. Therefore without stating the status of land, whether it is state or reserved land, the Respondents cannot use s. 163 of the Act to mount its claim.

Decision

[40] In conclusion, this court finds that the applicant is not liable for payment of rates under the respective notices for transmission towers that are located on State land and on private lands other than those owned by the applicant. To that extent, this court allows each of the applications and therefore, the decision of the respective respondent on the imposition of rates on the applicant for all those transmission towers is thereby quashed and set aside.

[41] For all those transmission towers that are located on lands owned by the applicant, this court finds that the applicant is liable to pay the rates imposed for those towers. To that extent, the applications relating to the decisions of Majlis Bandaraya Melaka Bersejarah, Majlis Perbandaran Alor Gajah and Majlis Perbandaran Hang Tuah are dismissed.

[42] No order as to costs.